

**ORDINANCE NO. 8
SERIES 2018**

**AN ORDINANCE AMENDING TITLE 12 OF THE VAIL TOWN CODE BY
THE ADDITION OF A NEW CHAPTER 27 OF TITLE 12, CONCERNING
WIRELESS SERVICE FACILITIES**

WHEREAS, pursuant to the Telecommunications Act of 1996 (the "Act"), local governments are authorized to regulate the placement, construction and modification of personal wireless service facilities, provided that any such regulation does not unreasonably discriminate among providers of functionally equivalent services, or prohibit, or have the effect of prohibiting the provisions of personal wireless services;

WHEREAS, Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 ("Section 6409") requires a local government to approve any eligible request for a modification of an existing wireless tower or base station that does not "substantially change" the physical dimensions of such tower or base station;

WHEREAS, the Colorado General Assembly passed House Bill 17-1193, which also provides certain mandatory procedural requirements and regulations for installation of small cell facilities within public rights-of-way; and

WHEREAS, the Town Council wishes to establish a procedure for review of applications for the installation of wireless service facilities within the Town in compliance with the Act, Section 6409 and House Bill 17-1193.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO, THAT:

Section 1. Title 12 of the Vail Town Code is hereby amended by the addition of a new Chapter 27, entitled "Wireless Service Facilities," to read as follows:

**CHAPTER 27
WIRELESS SERVICE FACILITIES**

12-27-1: PURPOSE AND APPLICABILITY:

A Purpose. The purposes of this Chapter are: to allow the location of wireless service facilities in the Town while protecting the public health, safety, and general welfare of the community; to act on applications for the location of wireless service facilities within a reasonable time; to encourage co-location of wireless service facilities, and to prevent unreasonable discrimination among providers of functionally equivalent services.

B. Applicability. This Chapter applies to all WSFs, in addition to all other applicable provisions of this Code.

12-27-2: DEFINITIONS:

For purposes of this Chapter, the following terms shall have the following meanings:

ACCESSORY EQUIPMENT: Equipment, including buildings and structures, used to protect and enable radio switching equipment, back up power and other devices incidental to a WSF, but excluding antennae.

ANTENNA: Communications equipment that transmits or receives electromagnetic radio frequency signals used to provide wireless service.

BASE STATION: A structure or equipment, other than a tower, at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network, including equipment associated with wireless communications services, including radio transceivers, antennae, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks), and any structure, other than a tower, to which any of the equipment described herein is attached.

BUILDING MOUNTED WSF: A WSF that is mounted and supported entirely on the roof of a legally existing building or structure or on the wall of a legally existing building or structure.

ELIGIBLE FACILITY REQUEST: A request for approval of the modification of an existing tower or base station that involves the co-location of new transmission equipment, the removal of transmission equipment or the replacement of transmission equipment.

EQUIPMENT STORAGE SHELTER: Buildings, storage shelters, and cabinets used to house WSF equipment.

FAA: Federal Aviation Administration.

FCC: Federal Communications Commission.

FREESTANDING WSF: A WSF that consists of a stand-alone support structure such as a tower or monopole, and antennae and accessory equipment.

MICRO WSF: A WSF that is no larger than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height, with exterior antenna, if any, of no more than eleven (11) inches in length.

PUBLIC RIGHT-OF-WAY: Any road, street, alley, trail, sidewalk, easement or right-of-way dedicated to public use, including without limitation access and utility easements.

SMALL CELL FACILITY: Either a personal wireless service facility as defined by the federal Telecommunications Act of 1996, or a WSF where: each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch. A small cell facility includes a micro WSF.

SMALL CELL NETWORK: A collection of interrelated small cell facilities designed to deliver wireless service.

SUBSTANTIAL CHANGE: A modification to an existing tower or base station under the following circumstances:

1. A substantial change in the height of an existing tower or base station occurs as follows:

- a. For a tower outside of a public right-of-way, when the height of the tower is increased by more than ten percent (10%), or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater.

- b. For a tower located in a public right-of-way or a base station, when the height of the structure increases by more than ten percent (10%) or by more than ten (10) feet, whichever is greater.

2. Changes in height are measured as follows:

- a. When deployments are separated horizontally, changes in height shall be measured from the original support structure, not from the height of any existing telecommunications equipment.

- b. When deployments are separated vertically, changes in height shall be measured from the height of the tower or base

station, including any appurtenances, as the tower or base station existed on February 22, 2012.

3. A substantial change in the width of an existing tower or base station occurs as follows:

a. For a tower outside of public rights-of-way, when the addition of an appurtenance to the body of the tower protrudes from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater.

b. For a tower in a public right-of-way or a base station, when the addition of an appurtenance to the body of the structure would protrude from the edge of the structure by more than six (6) feet.

4. A substantial change also occurs for an existing tower in a public right-of-way or an existing base station as follows:

a. When the change involves the installation of any new equipment cabinets on the ground, if no ground cabinets presently exist; or

b. When the change involves the installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any existing ground cabinets.

5. A substantial change also occurs for any existing tower or base station when any of the following are found:

a. When the change involves installation of more than the standard number of new equipment cabinets for the technology involved, or more than four (4) new cabinets, whichever is less.

b. When the change entails any excavation or deployment outside the current site.

c. When the change would defeat the concealment elements of the eligible support structure.

d. When the change does not comply with conditions associated with the original approval of the construction or modification of the tower, base station or base station equipment. This limitation does not apply if the noncompliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in subsections (1)-(5)(b) hereof.

TOWER: A structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennae and their associated facilities, including structures that are constructed for wireless communications services, including without limitation private, broadcast, public safety services, unlicensed wireless services and fixed wireless services such as microwave backhaul.

WIRELESS SERVICE: Data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal law.

WIRELESS SERVICE FACILITY (WSF): A facility for the provision of wireless services, including a small cell facility, excluding coaxial or fiber-optic cable that is not immediately adjacent to or directly associated with a particular antenna.

12-27-3: STANDARDS FOR ALL WSFS:

A. Compliance with law: All WSFs shall meet the current standards of the FCC and any other applicable law. By adopting this Section, the Town is not attempting to regulate radio frequency power densities or electromagnetic fields, which are controlled by the FCC.

B. Verification: Upon a request by the Town at any time, a WSF owner or operator shall verify that:

1. The WSF complies with current FCC regulations prohibiting localized interference with reception of television and radio broadcasts; and
2. The WSF complies with the current FCC standards for cumulative field measurements of radio frequency power densities and electromagnetic fields.

C. Applications:

1. An application to locate a new WSF not deemed to be an eligible facility request shall be approved or denied by the Town within ninety (90) days of the Town's receipt of a completed application. This time period may be tolled by mutual agreement. The time it takes for an applicant to respond to a first request for additional information will not count toward the ninety (90) day period set forth herein if the Town notifies the applicant of an incomplete application.

2. An application for approval of a WSF shall include all information regularly required for other development applications, in addition to the following: a written, narrative statement describing in detail how the WSF will comply with the standards in this Chapter; and if requested by the Town, photographic simulations showing the proposed WSF and, if applicable, the structure on which it will be attached.

3. When an application for approval of any WSF is incomplete, the Town shall provide written notice to the applicant within thirty (30) days, specifically identifying all missing documents or information. If an application remains incomplete after a supplemental submission, the Town shall notify the applicant within ten (10) days. Second or subsequent notices of incompleteness may not require the production of documents or information that were not requested in the original notice of incompleteness.

D. Criteria: In considering an application for approval of any WSF, the Town shall base its decision on whether the WSF meets the applicable standards as outlined in this Chapter and all other applicable standards of the Code.

E. Denial: A final decision by the Town to deny any application under this Chapter shall be in writing and supported by substantial evidence contained in a written record.

12-27-4: FREESTANDING WSFS:

A. Design review required: Prior to the location of a freestanding WSF in any zone district, design approval shall be required pursuant to Chapter 11 of this Title.

B. Setbacks: A freestanding WSF located within two hundred fifty (250) feet of property zoned for residential use shall be set back from each property line one (1) foot of distance for every one (1) foot of height, plus an additional ten (10) feet. A freestanding WSF located more than two hundred fifty (250) feet from property zoned for residential use shall meet the minimum setbacks for buildings and structures in the underlying zone district.

C. Maximum height: A freestanding WSF, including antennae, shall not exceed the maximum structure height limit in the underlying zone district; provided that in no case shall a freestanding WSF on private property exceed 40 feet in height.

12-27-5: BUILDING MOUNTED WSFS:

A. Design review required: Prior to the location of a building mounted WSF in any zone district, design approval shall be required pursuant to Chapter 11 of this Title.

B. All accessory equipment shall be placed inside a building if feasible. Equipment storage shelters shall be grouped as closely as technically possible, and the total area of all accessory equipment, including storage shelters, shall not exceed four hundred (400) square feet per WSF.

12-27-6: SMALL CELL FACILITIES:

A. Small cell facilities shall be considered a permitted use in all zone districts, subject to administrative review and determination.

B. A telecommunications provider or broadband provider may locate or collocate small cell facilities or small cell networks on light poles, light standards, traffic signals, or utility poles owned by the Town in public rights-of-way, subject to the following:

1. A small cell facility or a small cell network shall not be located or mounted on an apparatus, pole, or signal with tolling collection or enforcement equipment attached.

2. If upon inspection, the Town concludes that a WSF fails to comply with applicable law and constitutes a danger to persons or property, upon thirty (30) days' prior written notice to the owner or operator, the owner or operator shall bring the WSF into compliance. Upon good cause shown, the Town may extend such compliance period for not more than ninety (90) days from the date of said notice. If the owner or operator fails to bring the WSF into compliance, the Town may remove the WSF at the expense of the owner or operator.

C. The Town may contract with any telecommunications provider concerning the attachment of small cell facilities to poles or structures in the right-of-way. The Town shall not request or receive from a telecommunications provider, in exchange for or as a condition upon a grant of permission to attach a small cell facility, any in-kind payment or payment in excess of the amount that would be authorized if the Town were regulated pursuant to 47 U.S.C. § 224.

D. A telecommunications provider or broadband provider may file a consolidated application for a single permit for a small cell network

involving multiple individual small cell facilities. However, each small cell facility individually is subject to review for compliance with this Chapter.

12-27-7: MICRO WSFS:

A. No permit shall be required for the installation, placement, operation, maintenance, or replacement of a micro WSF that is suspended on cable operator-owned cables or lines that are strung between existing utility poles in compliance with applicable law.

B. The Town may require a permit for installation, placement, operation, maintenance, or replacement of a micro WSF where the installation, placement, operation, maintenance, or replacement:

1. Involves working within a highway travel lane or requires the closure of a highway travel lane;
2. Disturbs the pavement or a shoulder, roadway, or ditch line;
3. Includes placement on limited access rights-of-way; or
4. Requires any specific precautions to ensure the safety of the traveling public; the protection of public infrastructure; or the operation of public infrastructure; and such activities either were not authorized in, or will be conducted in a time, place, or manner that is inconsistent with, the approval terms of the existing permit for the facility or structure upon which the micro WSF is attached.

12-27-8: ELIGIBLE FACILITY REQUESTS:

A. Time: An eligible facility request shall be approved or denied by the Town within sixty (60) days of the Town's receipt of the completed application. This time period may be tolled only by mutual agreement or when an application is incomplete. If the Town fails to approve or deny an eligible facility request within sixty (60) days of the Town's receipt of the completed application (accounting for any tolling), the request shall be deemed granted; provided that this automatic approval shall become effective only upon the Town's receipt of written notice from the applicant after the review period has expired (accounting for any tolling) indicating that the application has been deemed granted.

B. Approval:

1. The Town shall approve an eligible facility request that does not substantially change the physical dimensions of a tower or base station.

2. The Town may approve an eligible facility request that substantially changes the physical dimensions of a tower or base station if it complies with the remainder of this Code.

3. The Town may condition the approval of any eligible facility request on compliance with generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety.

Section 2. Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance; and the Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

Section 3. Retroactivity. The amendment of any provision of the Town Code as provided in this ordinance shall not affect any right which has accrued, any duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision amended. The amendment of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

Section 4. Repeal. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, theretofore repealed.

INTRODUCED, READ ON FIRST READING, APPROVED, AND ORDERED PUBLISHED ONCE IN FULL ON FIRST READING this 3rd day of April, 2018 and a public hearing for second reading of this Ordinance is set for the 17th day of April, 2018, in the Council Chambers of the Vail Municipal Building, Vail, Colorado.

Dave Chapin, Mayor

ATTEST:

Patty McKenny, Town Clerk

READ AND APPROVED ON SECOND READING AND ORDERED PUBLISHED this 17th day of April, 2018.

Dave Chapin, Mayor

ATTEST:

Patty McKenny, Town Clerk